# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## INCOME TAX REFERENCE No. 49 of 1996

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

**HONOURABLE MR.JUSTICE D.H.WAGHELA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**THE COMMISSIONER OF INCOME TAX - Applicant(s)**
**Versus**
**M/S.NARSHIBHAI MULJIBHAI & CO. - Respondent(s)**

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**Appearance :**
MR MANISH R BHATT with Mrs Mona Bhatt for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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**Date : 22/09/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

**1.** The Income Tax Appellate Tribunal, Ahmedabad Bench 'C', at the instance of the Revenue, under

section 256 (1) of the Income Tax Act, 1961, has referred the following question for opinion of this Court which arises out of Income Tax Appeal No. 4998/Ahd/1989 relating to Assessment Year 1985-86:

> ***"Whether the Appellate Tribunal is right in law and on facts in holding that the order under section 154 is not a regular assessment and thereby deleting the interest charged under section 215 of the Act ?"***

**2.** The short facts necessary for disposal of the present matter are that the assessment in the case on hand was earlier completed at a total income of Rs.69,460/-, in the proceedings under section 143 (1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Subsequent thereto, the Assessing Officer disallowed the outstanding sales tax liability of Rs.1,79,444/- under section 43B of the Act resorting to section 154 and after adding the disallowance to the income, came to the conclusion that not only the assessee was to pay tax but was also liable to pay interest on the said amount under

section 215 of the Act. This order he passed in the proceedings which were initiated under section 154 of the Act. The assessee, being aggrieved by the said order, took up the matter in appeal, the CIT (Appeals) held that the interest could only be charged while making regular assessment under section 143 (1) and the Assessing Officer was not entitled to pass order under section 215 of the Act while making orders relating to assessment under section 154 of the Act. The Revenue took up the matter to the Tribunal which, in its turn, upheld the order passed by the CIT (Appeals). The Tribunal thereafter made application under section 256 (1) of the Act for making Reference to this Court which was accordingly allowed and the above referred question has been referred to this Court for its opinion.

**3.** We have heard Mrs. Bhatt, learned counsel for the Revenue. None appears for the assessee-respondent though served.

**4**. Mrs. Bhatt, learned counsel for the Revenue submits that the Income Tax Appellate Tribunal fell

in error in not noting that section 215 (3) of the Act came in the statute book with effect from 1.4.1985 by the Taxation Laws Amendment Act, 1984 and as the said law was in force on 1.4.1985, it would govern the assessment for the year 1985-86.

5. Placing strong reliance upon a judgment of the Supreme Court in the matter of ***Karimtharuvi Tea Estate Ltd. v. State of Kerala*** (1966) 60 ITR 262 and Division Bench judgment of this Court in the matter of ***CIT vs. Nirmal Textiles*** (1997) 224 ITR 378, she submits that any amendment which is brought into force on 1st April of the Assessment Year would govern the assessment year's proceedings and as in the present case section 215 stands amended w.e.f. 1.4.1985, the provision would be very much applicable to the assessment proceedings for the Assessment Year 1985-86. In the matter of ***Modi Industries Ltd. v. Commissioner of Income Tax and Anr.*** (1995) 216 ITR 759), the Supreme Court made the following observations:

> "Sections 214 and 215 with effect from April 1, 1985, have brought about important changes in the scheme of payment of interest by the Central Government or the assessee, as the case may be. The period, therefore, for which the interest has to be paid remains the same, i.e. the first day of the relevant assessment year to the date of the regular assessment (first assessment). But, the quantum of interest payable will depend upon the amount of refund payable after the quantum of tax has been payable is finally determined in appeal, revision or any other proceeding."

**6.** Section 215 (3) has been amended w.e.f. 1.4.1985 and within its sweep, it covers the orders made under section 147 or section 154 or section 155 or section 250 or section 254 etc. It provides that the amount on which interest was payable under sub-section (1) if it is increased or reduced, as the case may be, the interest shall be increased or reduced accordingly. In the above referred matter, the Supreme Court as also the High Court of Gujarat observed that, if an amendment is brought w.e.f. 1st April of the Assessment Year, then the amendment would cover the field and if an amendment is brought

into force on any date subsequent to 1st April of the Assessment Year, then unless retrospective effect is given to the said amendment, the said amendment would not be applicable to the proceedings for the said Assessment Year.

**7.** In view of the above referred judgments and amendment of section 215 (3) of the Act, we must hold that the Assessing Officer was justified in directing payment of interest. The Tribunal was not justified in holding that the order under section 154 not being a regular assessment, the interest could not be charged under section 215 of the Act.

The Reference is answered in favour of the Revenue. It is accordingly disposed of. No costs.

Sd/-
**[R. S. Garg, J.]**

Sd/-
**[D. H. Waghela, J.]**

*msp*